Supreme Court, U. S.
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No. 77-643

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

EDWARD SADLOWSKI

and

RAY MARSHALL, Secretary of Labor.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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SUPPLEMENTAL BRIEF OF RESPONDENT SADLOWSKI

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This brief is filed by Respondent Sadlowski in response to the Petitioner Steelworkers' "Supplemental Brief Reporting Important Development" filed with this Court on January 17, 1978. The development was said by Petitioner to be a letter to Petitioners' counsel, dated January 5, 1978, from the Labor Department's Solicitor.

In the light of the statement in that letter that the Solicitor had reviewed the earlier *Local 639, Teamsters* case, we are somewhat surprised that no reference was made therein to the recent position taken by the Labor Department in the U.S. District Court for the District of Columbia in that case. On July 18, 1977, after the

decision by the U.S. Court of Appeals and the denial of certiorari, the Government filed, at the request of the District Court, a "Statement of Services of Plaintiffs'-Intervenors' Attorney Prior to the Filing of this Suit". The present Labor Department Solicitor was listed of counsel on the last page of that filing. A copy of this Government filing on behalf of the Labor Department is attached hereto as an Appendix; a certified copy thereof has been filed with the Clerk of the Court.

In that recent filing, the Government stated that counsel for the intervenors there had rendered valuable assistance to the Labor Department in its successful prosecution of its Title IV action, both before and after the filing of the complaint. The representations made by the Government in its *Local 639, Teamsters* filing are important because, in our view, they reflect the actual experience of the Labor Department in the Title IV intervenors-fee area. The Government's affirmation there of the usefulness to the Secretary of the intervenor-attorney's services (before and after the filing of the complaint) is inconsistent with the arguments contained in the Solicitor's letter and hence provide added reason for the denial of certiorari here.

Respectfully submitted,

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APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

CIVIL ACTION
No. 1963-72

RAY MARSHALL, Secretary of Labor,
United States Department of Labor, *Plaintiff*,
and
DANIEL GEORGE,
and
PHILLIP FEASTER, *Intervenors-Plaintiffs*,

v.

LOCAL UNION NO. 639, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, IND., *Defendant*.

Statement on Services of Plaintiffs'-Intervenors' Attorney Prior to the Filing of This Suit

The court has requested a statement of the Secretary of Labor concerning the value of the services of Intervenors' attorney prior to the filing of this case.

The disputed election for Local 639 officers was scheduled to be held in December 1971, with nominations in November. At the nominations meeting of November 7, 1971, numerous members of the George-Feaster slate were disqualified for failure to attend four meetings in each of the two years immediately prior to nomination.

Article XXII, Section 5 of the Teamsters' Constitution required an appeal in writing within 48 hours. Mr. George and his slate filed a detailed protest on November 9, 1971, stating their objections to the meeting attendance rule; that it was contrary to the International Constitution as it re-

quired more than 50 percent attendance for two one year periods; that some members did not receive credit for meetings they attended and that very few members could run under the rule.

On November 18, 1971, Fitzsimmons directed that a new nominations meeting be held without applying the rule, saying it was contrary to the Constitution.

The new meeting was held on December 19, 1971, and again a number of members were disqualified, this time for not having attended 50 percent of the meetings in the previous two years. On December 20, 1971, seven disqualified members of the George-Feaster slate sent separate letters of protest to Fitzsimmons which Mr. Long assisted in preparing.

The grounds for protest in these appeals were that the attendance records were inadequate, that they were discriminatorily applied, that no excuse was provided for absence due to work or illness, as required by the Constitution, and that the rules for the second nomination meeting were unclear.

In addition, George learned that Local 639 was attempting to declare him ineligible as he was not working at the trade by reason of his discharge from Jacobs Transfer. In September 1971, Daniel George had been fired from his job with Jacobs Transfer Company as a result of his production of a leaflet charging that Local 639 had a "sweetheart contract" with Jacobs Transfer. With Mr. Long's assistance, he wrote to President Fitzsimmons on December 22, 1971, explaining all the circumstances of his discharge and that he was pursuing his remedies at the NLRB. Fitzsimmons restored George to the ballot, along with four members of the slate but did not restore three members on whose behalf appeals were immediately filed to preserve their rights under the Constitution.

The election was held on January 23, 1972 and the incumbent slate was elected. Complainants-Intervenors now

undertook to exhaust (or to invoke for three months if no final answer was given) their internal union remedies. These remedies must be invoked under Section 402(a) of the LMRDA and each step must be taken in a timely fashion in order for the Secretary to obtain jurisdiction. In addition, under the rule set forth in *Hodgson* v. *Local 6799, Steelworkers,* 403 U.S. 333, the Secretary may not sue on any point which was not complained of in the internal exhaustion unless that point was unknown to the complainants and could not reasonably have been known to them.

It should be noted that the pre-election protests concerning eligibility of candidates are also required in order to preserve those points for the appeal to the Secretary, and that the deadlines for action were in each case only 48 hours. On January 24, 1972, George and Feaster filed a protest with Local 639 and Joint Council 55 raising 12 points. These points included all the violations which the Secretary ultimately found to have occurred. Joint Council No. 55 conducted a hearing on February 18, 1972 and on February 23, 1972. Mr. Long, although not allowed to be present before the Joint Council, assisted in preparing the presentation which partially convinced the Joint Council. On April 5, 1972, Joint Council No. 55 ruled that a new election was required because of improper notice but not by reason of any of the other protests made. George on behalf of himself and Feaster protested the decision to the International on April 6, 1972, urging that all their objections should be sustained. Local President DeBrouse also protested this order. On April 17, International President Fitzsimmons wrote stating a hearing would be scheduled, and by telegram of April 19, 1972, appointed Vice President Gibbons to chair an appeal panel set for April 29, 1972. On April 22, 1972, George wrote Fitzsimmons requesting assistance in obtaining certain information to prepare for the hearing. By telegram received April 24, 1972, Fitzsimmons postponed the hearing; on April 28,

1972, John Long wrote Fitzsimmons seeking information on the hearing and on May 4, 1972, Fitzsimmons responded to George's question and also rescheduled the hearing for June 3, 1972. Long protested this date on May 8, 1972, and Fitzsimmons defended it by letter of May 9, 1972. On May 10, 1972, George requested an earlier date and on May 12, 1972, Fitzsimmons refused. On May 17, 1972, having invoked their internal remedies for more than three months without receiving a final decision. George and Feaster filed a timely complaint with the Secretary.

The exhaustion procedure in this case was properly carried out, and the internal complaint brought to the attention of the union all the matters which the Secretary eventually found to constitute violations as well as several others.

Once the complaint was filed with the Secretary, Mr. Long was active and helpful in the investigation. He suggested witnesses and helped arrange contacts with friendly witnesses.

In summary, those services which Mr. Long provided prior to the filing of the action contributed to providing the Secretary with a solid jurisdictional basis for bring suit, preserved all grounds for suit, helped provide evidence of violations, and, insofar as that suit resulted in benefits to the membership of Local 639, were of value to the union.

While this court is, as the Court of Appeals stated, readily able to take into account those services which Mr. Long rendered after the filing of the action, there were several matters in which Mr. Long assisted the Secretary which may not be within the purview of the court, (a) Mr. Long arranged to assist the Marshall's office in making service of the complaint on Local 639 and defendant was successfully served, and (b) during the campaign and the election under the Secretary's supervision, Mr. Long drew to the Secretary's attention a number of instances of in-

cipient violations of the Act. As a result, the Secretary was able to contact officials of Local 639 in time to prevent most of these violations. In the case of the union's failure to post notice of George's eligibility, Mr. Long's prompt action helped assure that the violation was remedied before the election.

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 1977, I served the attached Statement on Services of Plaintiffs'-Intervenors' Attorney Prior to the Filing of This Suit by mailing one copy, postage prepaid, to:

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